

(2) Indians who are members of Federally recognized tribes, except when the MCO or PCCM is—

- (i) The Indian Health Service; or
- (ii) An Indian health program or Urban Indian program operated by a tribe or tribal organization under a contract, grant, cooperative agreement or compact with the Indian Health Service.

(3) Children under 19 years of age who are—

- (i) Eligible for SSI under title XVI;
- (ii) Eligible under section 1902(e)(3) of the Act;
- (iii) In foster care or other out-of-home placement;
- (iv) Receiving foster care or adoption assistance; or
- (v) Receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of title V, and is defined by the State in terms of either program participation or special health care needs.

(e) *Priority for enrollment.* The State must have an enrollment system under which recipients already enrolled in an MCO or PCCM are given priority to continue that enrollment if the MCO or PCCM does not have the capacity to accept all those seeking enrollment under the program.

(f) *Enrollment by default.* (1) For recipients who do not choose an MCO or PCCM during their enrollment period, the State must have a default enrollment process for assigning those recipients to contracting MCOs and PCCMs.

(2) The process must seek to preserve existing provider-recipient relationships and relationships with providers that have traditionally served Medicaid recipients. If that is not possible, the State must distribute the recipients equitably among qualified MCOs and PCCMs available to enroll them, excluding those that are subject to the intermediate sanction described in § 438.702(a)(4).

(3) An “existing provider-recipient relationship” is one in which the provider was the main source of Medicaid services for the recipient during the previous year. This may be established through State records of previous managed care enrollment or fee-for-service

experience, or through contact with the recipient.

(4) A provider is considered to have “traditionally served” Medicaid recipients if it has experience in serving the Medicaid population.

#### § 438.52 Choice of MCOs, PHPs, and PCCMs.

(a) *General rule.* Except as specified in paragraphs (b) and (c) of this section, a State that requires Medicaid recipients to enroll in an MCO, PHP, or PCCM must give those recipients a choice of at least two entities.

(b) *Exception for rural area residents.* (1) Under any of the following programs, and subject to the requirements of paragraph (b)(2) of this section, a State may limit a rural area resident to a single MCO, PHP, or PCCM system:

- (i) A program authorized by a plan amendment under section 1932(a) of the Act.
- (ii) A waiver under section 1115 of the Act.
- (iii) A waiver under section 1915(b) of the Act.

(2) A State that elects the option provided under paragraph(b)(1) of this section, must permit the recipient—

- (i) To choose from at least two physicians or case managers; and
- (ii) To obtain services from any other provider under any of the following circumstances:

(A) The service or type of provider is not available within the MCO, PHP, or PCCM network.

(B) The provider is not part of the network, but is the main source of a service to the recipient. (This provision applies as long as the provider continues to be the main source of the service).

(C) The only plan or provider available to the recipient does not, because of moral or religious objections, provide the service the enrollee seeks.

(D) The recipient’s primary care provider or other provider determines that the recipient needs related services that would subject the recipient to unnecessary risk if received separately (for example, a cesarean section and a tubal ligation) and not all of the related services are available within the network.

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(E) The State determines that other circumstances warrant out-of-network treatment.

(3) As used in this paragraph, “rural area” is any area other than an “urban area” as defined in § 412.62(f)(1)(ii) of this chapter.

(c) *Exception for certain health insuring organizations (HIOs).* The State may limit recipients to a single HIO if—

(1) The HIO is one of those described in section 1932(a)(3)(C) of the Act;

(2) The recipient who enrolls in the HIO has a choice of at least two primary care providers within the entity.

(d) *Limitations on changes between primary care providers.* For an enrollee of a single MCO, PHP, or HIO under paragraph (b)(2) or (b)(3) of this section, any limitation the State imposes on his or her freedom to change between primary care providers may be no more restrictive than the limitations on disenrollment under § 438.56(c).

#### § 438.56 Disenrollment: Requirements and limitations.

(a) *Applicability.* The provisions of this section apply to all managed care arrangements whether enrollment is mandatory or voluntary and whether the contract is with an MCO, a PHP, or a PCCM.

(b) *Disenrollment requested by the MCO, PHP or PCCM.* All MCO, PHP, and PCCM contracts must—(1) Specify the reasons for which the MCO, PHP or PCCM may request disenrollment of an enrollee;

(2) Provide that the MCO, PHP or PCCM may not request disenrollment because of a change in the enrollee’s health status, or because of the enrollee’s utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his or her special needs (except where his or her continued enrollment in the MCO, PHP or PCCM seriously impairs the entity’s ability to furnish services to either this particular enrollee or other enrollees); and

(3) Specify the methods by which the MCO, PHP or PCCM assures the agency that it does not request disenrollment for reasons other than those permitted under the contract.

(c) *Disenrollment requested by the enrollee.* If the State chooses to limit

disenrollment, its MCO, PHP, and PCCM contracts must provide that a recipient may request disenrollment as follows:

(1) For cause, at any time.

(2) Without cause, at the following times:

(i) During the 90 days following the date of the recipient’s initial enrollment with the MCO, PHP or PCCM, or the date the State sends the recipient notice of the enrollment, whichever is later.

(ii) At least once every 12 months thereafter.

(iii) Upon automatic reenrollment under paragraph (g) of this section, if the temporary loss of Medicaid eligibility has caused the recipient to miss the annual disenrollment opportunity.

(iv) When the State imposes the intermediate sanction specified in § 438.702(a)(3).

(d) *Procedures for disenrollment.* (1) *Request for disenrollment.* The recipient (or his or her representative) must submit an oral or written request—

(i) To the State agency (or its agent); or

(ii) To the MCO, PHP or PCCM, if the State permits MCOs, PHPs, and PCCMs to process disenrollment requests.

(2) *Cause for disenrollment.* The following are cause for disenrollment:

(i) The enrollee was homeless (as defined by the State) or a migrant worker at the time of enrollment and was enrolled in the MCO, PHP or PCCM by default.

(ii) The plan does not, because of moral or religious objections, cover the service the enrollee seeks.

(iii) The enrollee needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time; not all related services are available within the network; and the enrollee’s primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk.

(iv) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the enrollee’s health care needs.